

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: NINE WEST LBO SECURITIES	:	
LITIGATION	:	
	:	<u>ERRATUM & ORDER</u>
Pertains to:	:	20-md-2941
	:	20-cv-4433
Kirschner, et al. v. Advisors Series	:	20-cv-4287
Trust, et al.	:	
	:	
Kirchner, et al. v. Kimmel, et al.	:	
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JED S. RAKOFF, U.S.D.J.

In an Opinion and Order dated May 23, 2025, this Court held that the Moving Defendants' argument that plaintiffs pled their intentional fraudulent conveyance claims with insufficient specificity under Fed. R. Civ. P. 9(b) was waived because the Moving Defendants did not "rais[e] it in their answers or at any time before moving for summary judgment." May 23, 2025 Opinion & Order, at 13-14. Defense counsel has now brought to the Court's attention that the Moving Defendants had in fact raised the objection in their respective answers; see Docket No. 20-cv-04433, ECF No. 151 (Answer filed on June 28, 2024); Docket No. 20-cv-4287, ECF No. 246 (Answer filed on June 28, 2024). However, while this is correct and the Court regrets the error, it is immaterial for the purposes of the Court's conclusion that the Moving Defendant's Rule 9(b) objection was waived. This is because the

proper time to raise this objection was on a motion to dismiss so as to permit plaintiffs an opportunity to amend their complaints to provide further particulars. Indeed, even when raising this issue in their summary judgment motion, the Moving Defendants largely make an argument directed at the pleadings. Finally, in any case, the plaintiffs have now adduced sufficient evidence to withstand summary judgment on this claim. See Plaintiffs' Memorandum of Law in Opposition to Motions of Defendants Gregg Marks and Whitney Smith for Summary Judgment, at pp. 19-20 (and facts of record referenced therein).

Accordingly, the Moving Defendants' application for a leave to file a motion for reconsideration of the Court's Opinion on this ground is hereby denied.

SO ORDERED.

Dated: New York, NY

May 29, 2025


JED S. RAKOFF, U.S.D.J.